IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/03/2003

CORAM

THE HONOURABLE MR. JUSTICE A.PACKIARAJ

CRIMINAL REVISION CASE NO.553 OF 2001
and
Crl.M.P.No.2657 of 2001

J.Anand
S/o B.Jayachandran
aged about 30 years
Managing Director
M/s Jaya Automative Pvt. Ltd.,
1057, Avinashi Road
Coimbatore 18 ..Petitioner

-Vs-

Inspector of Insurance
Employees State Insurance
Corporation
Coimbatore 12 ..Respondent

Criminal Revision Case filed against the order dated 6.10.99 in C.M.P.No.8449/1998 in S.T.C.No.1448/1998 on the file of the Judicial Magistrate No.II, Coimbatore.

!For petitioner : Mr.V.Sairam

^For respondent : Mr.V.K.Vijayaraghavan
Spl.P.P. For E.S.I.cases

:ORDER

This revision is filed against the order passed in C.M.P.No.8449/98 in S.T.C.No.1448/1998 on the file of the Judicial Magistrate No.II, Coimbatore dismissing the petition for dropping proceedings against the petitioner who is the Managing Director of M/s Jaya Automative Private Limited for the offence under Section 85 (e) (ii) of the E.S.I.Act.

2.The short point that arises for consideration is that according to the learned counsel for the petitioner only the principal employer can be prosecuted under Section 2(17) of the said Act which reads as under:
'(17)"Principal employer" means-

(i) in a factory, the owner or occupier of the factory, and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under [the Factories Act, 1948];the person so named;
(ii)in any establishment under the control of any department of any government in India, the authority appointed by such government in this behalf or where no authority is so appointed, the head of the department;
(iii)in any other establishment, any person responsible for the supervision and control of the establishment;

According to the learned counsel, the Managing Director cannot be termed as 'principal employer' especially because, there is a Manager in the Company.

3.I am not able to agree with the argument of the learned counsel for the petitioner. The penalty clause, namely, Section 85, begins as 'if any person' and clause (e) states 'fails or refuses to submit any return required by the regulations, or makes a false return', it goes without saying that a person who fails to do or obey the mandate of the Act is to be prosecuted and nowhere the Act says only the principal employer should be prosecuted.

4.In addition to this, the Special Public Prosecutor appearing for E.S.I.cases would bring to my notice Section 86 A which reads as follows:

"(1) If the person committing an offence under this Act is a company, every person, who at the time the offence was committed was incharge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:'

Therefore, according to this Section, the person in charge is liable to be prosecuted. Whether he is the Managing Director or the Director, it is open for the prosecution to establish as to who were in charge at the relevant time. This can be gone into only at the time of trial.

5.Even assuming that the directors are made the accused in this case, it is for the prosecution to let in evidence as to how they were in charge of the conduct of the business and that has to be decided only at the end of the trial.

6.The learned counsel for the petitioner placed before the Court a decision of the Madras High Court reported in 2000 I LW (Crl)255 (S. PALANIAPPAN ETC AND OTHERS V. SUB-INSPECTOR OF POLICE) wherein a definition of the principal employer has been given and the learned Judge has stated that the directors cannot be classified as principal employer. But, however, the learned Judge has not gone into Section 86 A and the said decision does not also show whether the accused in that case has been prosecuted at all. Therefore, the said decision absolutely does not apply to the facts and circumstances of this case.

7.The learned counsel for the petitioner also placed reliance on the decision of the Supreme Court reported in 1991 LW Crl. 279 (EMPLOYEES STATE

INSURANCE CORPORATION, CHANDIGARH V. GURDIAL SINGH AND OTHERS)wherein again the principal employer as found under Section 2 clause 17 has been considered. But, that decision is also not applicable to the facts and circumstances of this case since it does not deal with prosecution under Section 85 of the Act.

8.Hence, on going through the averments in the complaint, I am fully satisfied that the prosecution is maintainable in so far as the accused is concerned. Consequently, the revision is dismissed. Consequently, Cr.M.P.No.2647/2001 is also dismissed.

9.Since the case is of the year 1994, I direct the Magistrate to give preference to this case and dispose of the same as expeditiously as possible.

Index:yes
Internet:yes

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To

1. The Judicial Magistrate No.II
Coimbatore

2.-do- thro' the Chief Judicial Magistrate
Coimbatore